IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7087 OF 2002

Smt. Sunderabai Devram Rathod	...	Petitioner
Vs.		
Shri Pandurang Baburao Garsund & Ors.	...	Respondents

Mr. S.D. Ratnaparkhi for the petitioner.

Mr. N.M. Apte for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 22ND MARCH, 2005.

P.C.:-

1. The petitioner is the original defendant. She is the wife of the original landlord. In this petition, she has challenged the concurrent findings of fact recorded by the courts below that the landlord requires the suit premises being two rooms on the first floor of House No.13, Old Bazar, Khadki, Pune - 411 003, reasonably and bonafide for personal use.

2. Admittedly, the deceased landlord's three sons reside in the rented accommodation in House No.391. The Commissioner's report (Ex-71) is on record. It states that the two rooms in House No.391 are on the ground floor. They admeasure approximately 11.5' x 7.5'. They have uneven height and maximum height is of 8.2'. The

height of the two rooms on the first floor is just 4.6' at the front end 8.2' at the middle. Obviously, therefore, the two rooms on the first floor are in the nature of mezzanine floor. In these rooms, the deceased landlord's sons reside with their families. Their unmarried sister also resides there. Pandurang, another son of the deceased landlord resides in two rooms on the ground floor of House No.13 along with his family. Three adults and two children reside in the said room. This accommodation is a rented accommodation. Therefore, the courts below are right in holding that the accommodation, which is available with the landlord is not sufficient to accommodate such a large family. As against this, son of the tenant has acquired government quarters, which consists of two rooms, latrine and bathroom and veranda. Therefore, no hardship is likely to be caused to the tenant if the decree is passed against the tenant. Besides, though the defendants claim that they made attempts to acquire premises, they have not been able to substantiate their statement.

3. Mr. Ratnaparkhi, the learned counsel for the petitioner contended that the landlord has got possession of two rooms from a tenant. However, the landlord let them out, and, therefore, the landlord's requirement cannot be called bonafide. The trial court has observed that the two rooms in possession of Agarkar came in possession of the landlord prior to 30 years and, at that time, the landlord was not in need of more rooms due to

small family and, hence, those two rooms were given on rent to some other person. This reasoning appears to be correct. Mr. Ratnaparkhi further contended that during the pendency of this litigation, the landlord has received possession of two more rooms. He has filed the affidavit of the petitioner to that effect. Assuming that the landlord has received possession of two more rooms, considering the strength of the landlord's family, the decree which is passed in the landlord's favour cannot be disturbed on that ground. The accommodation would still be inadequate for such a big family. Besides, the affidavit is sworn on 17/3/2005 and it is filed in this court today. Copy is served on the respondents today. In the circumstances, the affidavit cannot be taken into consideration. Moreover, the concurrent findings of fact is unassailable. There is, therefore, no substance in the petition. Hence, the petition is dismissed.

4. At this stage, the learned counsel for the petitioner states that the petitioner is suffering from bone cancer. Therefore, one year's time may be granted to her to vacate the suit premises. The learned counsel for the respondents objects. Since the petitioner is suffering from bone cancer, the petitioner should be given a year's time to vacate the suit premises. Hence, the petitioner is given one year's time to vacate the suit premises on the petitioner and all adult members of her family filing the usual undertakings in this court that they will not

sell, assign, transfer, alienate, encumber the suit premises or create any third party rights in the suit premises or induct any one in the suit premises. Such undertakings should be filed within a period of four weeks from today.

5. In view of the dismissal of the petition, the connected civil application is also disposed of.

(SMT. RANJANA DESAI, J.)